



AN ACT PROVIDING FOR A SEPARATE POSTADOPTIVE COUNSELING AND SUPPORT PROGRAM WITHIN A CHILD-PLACING AGENCY; SPECIFYING THAT THE COSTS OF THE PROGRAM MAY NOT BE INCLUDED IN PLACEMENT FEES; AND AMENDING SECTIONS 42-2-409 AND 42-7-105, MCA.

WHEREAS, child-placing agencies that provide care and placement of children are in a unique position to provide care and support to a birth parent after relinquishment of a child, especially to parents of few means, which would be consistent with the agencies' ministry; and

WHEREAS, there are currently financial and other means of support for parents who choose to keep their children that are compelling parents of little means to keep their children; and

WHEREAS, the ability to provide similar forms of support to a parent who has chosen to relinquish a child in order to give the parent a chance to grieve and to assist the parent with counseling, temporary housing, mentoring services, job training, life skills development, budgeting and financial management, and educational opportunities will provide birth parents with another option that can help provide for their future after their children have been placed with adoptive families; and

WHEREAS, explicit authority for the program is necessary with the caveat that the program must be kept separate from any program for the placement of children and must be paid for by the agency with separate funds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Postadoptive counseling and support -- intent.** (1) An agency may have a specific program, separate from its program for the care and placement of children, to provide postadoptive counseling and support for birth parents who have relinquished children for adoption. The program may include but is not limited to grief and loss counseling, temporary housing, mentoring services, job training, life skills development, budgeting and financial management, educational opportunities, and transportation.

(2) (a) The provision of the services in subsection (1) may not be included by an agency in the fees related to placement for adoption by a parent as provided in 42-7-101.

(b) An agency providing postadoptive counseling and support shall include a full accounting of the operation of the program as part of the financial statement required in 52-8-104.

(c) An agency may accept federal funds, grants, or donations specifically for the purpose of funding a program to provide the services in subsection (1) that is separate from the agency's program for the care and placement of children.

**Section 2.** Section 42-2-409, MCA, is amended to read:

**"42-2-409. Counseling requirements.** (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.

(2) Counseling must be performed by a person employed by the department or by a staff person of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is void.

(3) During counseling, the counselor shall offer an explanation of:

(a) adoption procedures and options that are available to a parent through the department or licensed child-placing agencies;

(b) adoption procedures and options that are available to a parent through direct parental placement adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;

(c) the alternative of parenting rather than relinquishing the child for adoption;

(d) the resources that are available to provide assistance or support for the parent and the child if the parent chooses not to relinquish the child;

(e) the legal and personal effect and impact of terminating parental rights and of adoption;

(f) the options for contact and communication between the birth family and the adoptive family;

(g) postadoptive issues, including grief and loss, and the existence of a postadoptive counseling and support program;

(h) the reasons for and importance of providing accurate medical and social history information under

42-3-101;

- (i) the operation of the confidential intermediary program; and
- (j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate.

(4) The counselor shall prepare a written report containing a description of the topics covered and the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report must, on request, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents."

**Section 3.** Section 42-7-105, MCA, is amended to read:

**"42-7-105. Prohibited activities -- violations -- penalties.** (1) A person, other than the department or a licensed child-placing agency, may not:

- (a) advertise in any public medium that the person:
  - (i) knows of a child who is available for adoption; or
  - (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child; or
- (b) engage in placement activities as defined in 52-8-101.

(2) An individual other than an extended family member or stepparent of a child may not obtain legal or physical custody of a child for purposes of adoption unless the individual has a favorable preplacement evaluation or a court-ordered waiver of the evaluation.

(3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person, either directly or indirectly, anything other than the fees allowed under 42-7-101 commits the offense of paying or charging excessive adoption process fees.

(4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under 42-7-101. All payments by the adoptive parent made on behalf of a birth parent pursuant to this section are considered a gift to the birth parent.

(5) Nothing in this section prohibits a licensed child-placing agency from maintaining a separate program

for the assistance of a biological parent who is in need of postadoptive counseling and support as provided in [section 1]. Services must be provided based on need and may not be contingent on a placement being made privately, by the department, or by a licensed child-placing agency. A postadoptive counseling and support program may not be used to induce a biological parent to place a child for adoption.

~~(5)~~(6) A person convicted of the offense of paying or charging excessive adoption process fees, attempting to recover expenses incurred from an adoption process, or otherwise violating this title may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city or county attorney. The court may also enjoin from further violations any person who violates this title."

**Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 42, chapter 4, part 2, and the provisions of Title 42, chapter 4, part 2, apply to [section 1].

- END -

I hereby certify that the within bill,  
HB 0367, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 367

INTRODUCED BY MCGILLVRAY, R. BROWN, CAFERRO, SANDS, SMITH, REICHNER

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